

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
C.A. No. 3:20-cv-00182-RJC**

LEGRETTA F. CHEEK,

Plaintiff,

V.

BANK OF AMERICA, N.A., JOE DOE,  
GURSTEL LAW FIRM, P.C., WHITNEY M.  
JACOBSON, JESSE VASSALLO LOPEZ,  
BROCK & SCOTT, PLLC, BIRSHARI COOPER,

Defendants.

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**DEFENDANTS GURSTEL LAW FIRM, P.C.,  
WHITNEY M. JACOBSON AND JESSE VASSALLO LOPEZ  
MOTION TO DISMISS THE COMPLAINT**

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**NOW COMES** the Defendants Gurstel Law Firm, P.C., Whitney M. Jacobson and Jesse Vassallo Lopez, by and through undersigned counsel, and hereby move this Court for an order dismissing the Complaint in this action pursuant to the judicial common law rules against claim splitting and under Rules 12(b)(2) and 12(b)(3) of the Federal Rules of Civil Procedure.

As grounds for their Motion, the movants would show unto this honorable Court the following:

1. Defendants Gurstel Law Firm, P.C., Whitney M. Jacobson and Jesse Vassallo Lopez do not have sufficient contacts with the State of North Carolina to be

subject to personal jurisdiction with this Court. Defendants move the Court to dismiss the Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

2. Plaintiff has brought this lawsuit in the Western District of North Carolina, however, pursuant to U.S.C. § 1391 this judicial district is an improper venue for this action. Defendants move the Court to dismiss the Complaint pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure.

3. Plaintiff has already filed a lawsuit against Defendants in the United State District Court for the Western District of North Carolina, Case No. 3:19-CV-00590-FDW, that arises out of the same facts. With one suit already pending in federal court, Plaintiff has no right to assert another action “on the same subject in the same court, against the same defendant, at the same time.” *Sensormatic Sec. Corp. v. Sensormatic Elecs. Corp.*, 273 Fed. Appx. 256, 265 (4th Cir. 2008). Accordingly, Defendants move to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

4. As further basis for their Motions, Defendants shall rely on the evidence, arguments and authorities set forth in their Memorandum of Law, in addition to the declarations of Defendants submitted in Case No. 3:19-CV-00590-FDW: Declaration of Norman I. Taple [on behalf of Gurstel Law Firm] ECF No. 17, C.A. No. 3:20-cv-00182-RJC; Declaration of Whitney M. Jacobson, ECF No. 19, C.A. No. 3:20-cv-00182-RJC; Declaration of Jesse Vassallo Lopez, ECF No. 20, C.A. No. 3:20-cv-00182-RJC).

WHEREFORE, Defendants Gurstel Law Firm, P.C., Whitney M. Jacobson and Jesse Vassallo Lopez respectfully request that the Court grant this Motion to Dismiss.

This the 18th day of May, 2020.

**SMITH DEBNAM NARRON DRAKE  
SAINTSING & MYERS LLP**

/s/ Caren D. Enloe

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Firm, P.C., Whitney M. Jacobson, Jesse  
Vassallo Lopez*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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I also certify that the foregoing document is being served this day on Plaintiff via First Class Mail, postage pre-paid and via email.

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